

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 1 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ADRIAN CABRERA ESPINOZA,

Petitioner,

v.

PAMELA BONDI, Attorney General,

Respondent.

No. 25-341

Agency No.
A079-369-148

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 17, 2025**
Pasadena, California

Before: CLIFTON, OWENS, and DE ALBA, Circuit Judges.

Petitioner Adrian Cabrera Espinoza, a native and citizen of Mexico, seeks review of a Board of Immigration Appeals (BIA) decision denying his motion to reopen removal proceedings to pursue his Convention Against Torture (CAT)

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

claim based on new evidence of recent threats against him. Cabrera Espinoza argues that the BIA considered his motion under the wrong standard.

We review the BIA’s denial of a motion to reopen for abuse of discretion. *See Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 702 (9th Cir. 2022). We deny the petition.

1. The BIA used the phrase “change the result” in its denial of Cabrera Espinoza’s motion, but its reasoning made clear that the BIA applied the correct “reasonable likelihood” standard set forth in *Fonseca-Fonseca v. Garland*, 76 F.4th 1176 (9th Cir. 2023). In a motion to reopen, the petitioner must present new evidence that demonstrates a threshold “prima facie eligibility for relief” and establishes a “reasonable likelihood” that he would “prevail on the merits if the motion to reopen were granted.” *Id.* at 1179. “The reasonable likelihood standard requires a petitioner to show more than a mere possibility [he] will establish a claim for relief, but it does not require [him] to demonstrate [he] is more likely than not to prevail.” *Id.* at 1183 (internal quotation marks omitted).

The BIA properly applied *Fonseca-Fonseca*’s reasonable likelihood standard here. The BIA correctly cited *Fonseca-Fonseca* as the source of the standard, recited the “reasonable likelihood” language, and centered its analysis upon whether Cabrera Espinoza’s new evidence cured the deficiencies in his prior application. In this context, the reference to Cabrera Espinoza’s failure to present

new evidence that would “change the result” simply meant that he was still unable to establish a prima facie case. The BIA’s reasoning rested on whether Cabrera Espinoza made a threshold showing, consistent with *Fonseca-Fonseca*, and not whether he established his CAT eligibility with “absolute certainty.” Therefore, the BIA correctly applied the reasonable likelihood standard. *See Magana-Magana v. Bondi*, 129 F.4th 557, 572 (9th Cir. 2025) (“Viewing the BIA’s decision as a whole, it is clear that the BIA understood the proper legal standard and applied it.”).

2. The BIA did not abuse its discretion in denying Cabrera Espinoza’s motion to reopen, because he failed to make the necessary prima facie showing of eligibility for CAT relief. The BIA can deny a motion to reopen for “failure to establish a prima facie case for the relief sought.” *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010) (quoting *INS v. Doherty*, 502 U.S. 314, 323 (1992)). To establish prima facie eligibility for CAT deferral, the relief requested here, Cabrera Espinoza needed to show it is more likely than not he would be tortured if removed to Mexico. 8 C.F.R. § 1208.16(c)(2).

The new evidence Cabrera Espinoza presented in his motion to reopen consisted of declarations from his brother and son, describing threats made against him. The declarations did not provide information sufficient to cure the two deficiencies in Cabrera Espinoza’s CAT claim: his failures to show (1) that he

could not safely relocate within Mexico; and (2) that public officials would consent or acquiesce to him being harmed. These lingering deficiencies prevent Cabrera Espinoza from establishing prima facie eligibility for CAT relief. *See* 8 C.F.R. § 1208.16(c)(3); 8 C.F.R. § 1208.18(a)(1). The BIA therefore acted within its discretion by denying his motion to reopen.

PETITION FOR REVIEW DENIED.¹

¹ The Motion to Stay Removal, Dkt. No. 5, is DENIED effective upon issuance of the mandate from this Court.